

Case Examiner Decision
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FTPS-21279

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The role of the case examiners

The case examiners perform a filtering function in the fitness to practise process, and their primary role is to determine whether the case ought to be considered by adjudicators at a formal hearing. The wider purpose of the fitness to practise process is not to discipline the social worker for past conduct, but rather to consider whether the social worker's current fitness to practise might be impaired because of the issues highlighted. In reaching their decisions, case examiners are mindful that Social Work England's primary objective is to protect the public.

Case examiners apply the 'realistic prospect' test. As part of their role, the case examiners will consider whether there is a realistic prospect:

- the facts alleged could be found proven by adjudicators
- adjudicators could find that one of the statutory grounds for impairment is engaged
- adjudicators could find the social worker's fitness to practise is currently impaired

Case examiners review cases on the papers only. The case examiners are limited, in that, they are unable to hear and test live evidence, and therefore they are unable to make findings of fact.

Decision summary

Decision summary	
Preliminary outcome	Accepted disposal proposed - warning order (3 years)
Final outcome	Warning order – 3 years
Date of the preliminary decision	18 May 2023
Date of the final decision	06 June 2023

Executive summary

The case examiners are satisfied that there is a realistic prospect that:

1. The factual concerns could be found proven by the adjudicators;
2. Those concerns could amount to the statutory ground of misconduct;
3. The adjudicators could conclude that the social worker's fitness to practise is currently impaired.

The case examiners do not consider it to be in the public interest for the matter to be referred to a final hearing and that the case can be concluded by way of accepted disposal.

As such, the case examiners notified the social worker of their intention to resolve the case with a warning order of 3 years. The social worker accepted the case examiner's proposal, in full. The case examiners again considered the public interest and remain of the view that a warning order remains the minimum necessary to protect the public and maintain public confidence in the profession.

The case examiners have considered all of the documents made available within the evidence bundle. Key evidence is referred to throughout their decision and the case examiners' full reasoning is set out below.

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised by the social worker's former employer.
Date the complaint was received	19 October 2022
Complaint summary	The social worker's former employer raised concern about the social worker allegedly accessing confidential case records without professional reason to do so.

Regulatory concerns

Regulatory concern 1

Whilst registered as a social worker between April 2022 & October 2022, you accessed service users case records without authority or professional reason to do so.

The matters outlined in regulatory concern 1 amount to the statutory grounds of misconduct.

Your practise is impaired by reason of misconduct.

Preliminary issues

Investigation		
Are the case examiners satisfied that the social worker has been notified of the grounds for investigation?	Yes	☒
	No	☐
Are the case examiners satisfied that the social worker has had reasonable opportunity to make written representations to the investigators?	Yes	☒
	No	☐
Are the case examiners satisfied that they have all relevant evidence available to them, or that adequate attempts have been made to obtain evidence that is not available?	Yes	☒
	No	☐
Are the case examiners satisfied that it was not proportionate or necessary to offer the complainant the opportunity to provide final written representations; or that they were provided a reasonable opportunity to do so where required.	Yes	☒
	No	☐

The realistic prospect test

Fitness to practise history

The case examiners have been informed that there is no previous fitness to practise history.

Decision summary

Is there a realistic prospect of the adjudicators finding the social worker's fitness to practise is impaired?

Yes ☒

No ☐

The case examiners have determined that there is a realistic prospect of regulatory concern 1 being found proven, that the concern could amount to the statutory ground of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Regulatory concern 1

Whilst registered as a social worker between April 2022 & October 2022, you accessed service users case records without authority or professional reason to do so.

The case examiners have had sight of a computer-generated audit provided by the social worker's former employer. The audit details dates and times logged to the social worker's employer account, accessing five separate case records on the computer database.

The dates documented on the computer-generated audit correlate with the dates detailed in the regulatory concern.

The case examiners have noted information from the former employer's internal investigation whereby it was concluded that the social worker had no professional reason to access the records and had no authority to do so. The social worker accepts this as fact.

Whilst the case examiners note that the social worker held the informal role of 'Life Long Link' for specific children in care, this was not a professional role and there is no evidence this role would give the social worker authorisation to access confidential case records.

The case examiners note a supervision document dated 09 June 2022 whereby accessing service users' records was addressed directly with the social worker by their line manager. The computer generated audit shows the social worker continued to access the service user records beyond June 2022 and accept in their correspondence with Social Work England: *"I was told in the June not to look at the case files for the children and totally accept that this should have been enough to stop me from doing this..."*

The social worker, both within the internal investigation and their correspondence with Social Work England, accepts the regulatory concern in full: *"I totally agree that I accessed the files of the young people in question and that I didn't have a professional reason to do so."* They go on to state they accessed confidential case records to, in their mind, to help and support children for whom they were a 'Life Long Link' ignorant to it being a data breach.

Having considered the evidence, the case examiners are satisfied there is a realistic prospect of this concern being found proven by adjudicators.

Grounds

Misconduct

The case examiners note there are considered to be two types of misconduct. These are (either of the following):

- misconduct which takes place in the exercise of professional practice
- misconduct which occurs outside the exercise of professional practice but calls into question the suitability of the person to work as a social worker.

In this case, the conduct is alleged to have occurred in the exercise of professional practice.

To help them decide if the evidence suggests a significant departure from professional standards, the case examiners have considered the following standards, which were applicable at the time of the concerns.

Social Work England – Professional Standards (2019)

Establish and maintain the trust and confidence of people.

As a social worker, I will:

2.2. Respect and maintain people's dignity and privacy.

2.6. Treat information about people with sensitivity and handle confidential information in line with the law.

Be accountable for the quality of my practice and the decisions I make.

As a social worker, I will:

3.1. Work within legal and ethical frameworks, using my professional authority and judgement appropriately.

Social workers are entrusted with access to highly sensitive data about the people in their community. It is essential that the public can trust that this information will only be accessed when a social worker has legitimate, professional reason to do so. Accordingly, it is a serious departure from the standards for a social worker to access such data without professional reason or authorisation, particularly where it is alleged that the data, they have accessed relates to multiple service users and is persistent in nature.

Furthermore, the case examiners note an aggravating feature of this case is that the social worker was told directly not to access the service users' case files by their line manager in June 2022, but the social worker chose to disregard this management instruction.

Having considered the evidence the case examiners are satisfied there is a realistic prospect of adjudicators determining that the ground of misconduct is engaged.

Impairment

The personal element of impairment

In considering the personal element of impairment, the case examiners have considered the test set out in the case examiner guidance (2022), namely whether the conduct is remediable; whether the social worker has undergone remediation and demonstrated insight; and whether there is a likelihood the matters alleged will be repeated.

The case examiners do consider that the alleged conduct is remediable by the social worker, for example through training in relation to data protection and insight and reflection on their conduct, together with a consideration of how they might respond differently in future.

With regards to remediation, the case examiners have noted that the social worker's current employer has spoken positively about the social worker's practice and conduct. In addition, the social worker has provided a certificate of completion for 'Information Compliance Sharing and Guarding' course completed in December 2022. The social worker states this is an annual course which is required in their current employment.

Whilst the social worker has provided a narrative of explanation with regards to the regulatory concern, the case examiners consider the submissions lack reflection and would suggest a developing insight rather than a full appreciation of the potential far reaching impact of their conduct.

The social worker has set out, in their submissions, that they would gain management support should they have concerns regarding children whom they are a 'Life Long Link' but there is no evidence available to demonstrate this has been translated into practice.

Given the social worker's remediation, developing insight, and taking into account the positive reference from the social worker's current employer, the case examiners are satisfied that the risk of repetition remains.

The public element of impairment

The case examiners next considered whether the social worker's actions have the potential to undermine public confidence in the social work profession, or the maintenance of proper standards for social workers. Public interest includes the need to uphold proper standards of conduct and behaviour and the need to maintain the public's trust and confidence in the profession.

A social worker who accesses service user information without authorisation undoubtedly has the potential to undermine public confidence. The social worker's conduct, in this case, affected five service users over a number of months. In addition, the social worker's conduct continued after management instruction to stop accessing the service users' case records. Such conduct is certainly a significant departure from professional standards.

Regulatory concerns regarding breaching confidentiality go to the heart of public confidence in the social work profession. They have the potential to undermine the public's trust in social workers. As such, it is likely the public would expect that a finding of current impairment is made by adjudicators to maintain public confidence in regulation of the profession.

Having considered both the personal and public elements, the case examiners have concluded there is a realistic prospect that adjudicators would find the social worker to be currently impaired.

The public interest

Decision summary

Is there a public interest in referring the case to a hearing?	Yes	☐
	No	☒

Referral criteria

Is there a conflict in the evidence that must be resolved at a hearing?	Yes	☐
	No	☒
Does the social worker dispute any or all of the key facts of the case?	Yes	☐
	No	☒
Could a removal order be required?	Yes	☐
	No	☒
Would not holding a public hearing carry a real risk of damaging public confidence in Social Work England's regulation of the profession?	Yes	☐
	No	☒
Is a hearing necessary to maintain public confidence in the profession, and to uphold the professional standards of social workers?	Yes	☐
	No	☒

Additional reasoning

The case examiners have considered whether a referral to a hearing may be necessary in the public interest, and have noted the following:

- There is no conflict in the evidence in this case and the social worker has accepted the key facts.
- While it is unclear whether the social worker accepts that their conduct is impaired, as they have not addressed this through submissions, the accepted disposal process will provide the social worker an opportunity to review the case examiners' reasoning on impairment and reflect on whether they do accept a finding of impairment. It is open to the social worker to reject any accepted

disposal proposal and request a hearing if they wish to explore the grounds or the question of impairment in more detail.

- The case examiners are of the view that there remains a risk of repetition, however they consider that this can be managed through other sanctions available to them.
- The case examiners are also of the view that the public would be satisfied to see the regulator take prompt, firm action in this case, with the publication of an accepted disposal decision providing a steer to the public and the profession on the importance of adhering to the professional standards expected of social workers in England.

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
Proposed duration	3 years	

Reasoning

In considering the appropriate outcome in this case, case examiners have had regard to Social Work England's sanctions guidance (2022) and reminded themselves that the purpose of sanction is not to punish the social worker but to protect the public and the wider public interest. Furthermore, the guidance requires that decision makers select the least severe sanction necessary to protect the public and the wider public interest.

In determining the most appropriate and proportionate outcome in this case, the case examiners considered the available sanctions in ascending order of seriousness. The case examiners first considered taking no further action but considered that this would not be appropriate in a case where a social worker, accessed the confidential case records of multiple service users over a number of months. Taking no further action would not provide the necessary level of public protection and would not satisfy the wider public interest.

The case examiners next considered whether offering advice would be sufficient in this case. An advice order will normally set out the steps a social worker should take to address the behaviour that led to the regulatory proceedings. The case examiners decided that issuing advice was not sufficient to mark the seriousness with which they view the social worker's alleged conduct.

The case examiners next considered whether a warning order would be appropriate in this case. The case examiners are aware that where a social worker's fitness to practise is potentially impaired, they will usually need to ensure the public is protected through some action by the regulator. The case examiners are of the view it is necessary to preserve public confidence in the profession and as such have decided to suggest a

warning order, which implies a clear expression of disapproval of the social worker's conduct. The case examiners have considered the length of time for the published warning and consider 3 years to be proportionate in this case. The case examiners have referred to Social Work England impairment and sanctions guidance in making this decision and do not consider 1 year to be proportionate as they do not view the matter as an isolated incident of relatively low seriousness. They went on to consider 3 years and considered this to be appropriate as they view the conduct as more serious as the social worker accessed multiple records over a period of time and disregarded management instruction to not access the records. 3 years would allow the social worker's insight to develop and give a period of time to demonstrate putting their learning into practice with regards to data protection. The case examiners did not consider a 5-year duration to be proportionate in this case.

The case examiners went on to consider whether the final two sanctions, conditions of practice and suspension were appropriate in this case. They were mindful of their guidance, which states that where there is a risk of repetition, a sanction requiring restriction of practice will normally be necessary. On this occasion the case examiners consider that conditions of practice or suspension are not warranted. The case examiners are of the view that although the social worker's development of insight is not yet complete, oversight by the regulator would be disproportionate, and a warning will achieve the primary goal of protecting the public and safeguarding public confidence. The case examiners considered that suspension from the register would be a disproportionate and punitive outcome in this case.

The case examiners will notify the social worker of their intention to suggest a published warning and seek the social worker's agreement to dispose of the matter accordingly. The social worker will be offered 14 days to respond. If the social worker does not agree, or if the case examiners revise their decision regarding the public interest in this case, the matter will proceed to a final hearing.

Content of the warning

The case examiners formally warn the social worker as follows:

It is imperative that confidential information is accessed only in line with the appropriate legal frameworks. Should there be any doubt over access to information, then legal or information governance advice should be sought, and that advice adhered to, ensuring confidential information is not accessed by anyone without the authority and/or professional reason to do so.

The case examiners would draw the social worker's attention to the following professional standards:

Establish and maintain the trust and confidence of people

As a social worker, I will:

2.2. Respect and maintain people's dignity and privacy.

2.6. Treat information about people with sensitivity and handle confidential information in line with the law.

Be accountable for the quality of my practice and the decisions I make

As a social worker, I will:

3.1. Work within legal and ethical frameworks, using my professional authority and judgement appropriately.

You must ensure that any future practice meets the professional standards. It is essential that you do this to ensure that service users receive the support and protection they require.

In relation to your ongoing practice, any further issues of a similar nature brought to the attention of the regulator are likely to be dealt with more seriously.

Response from the social worker

The social worker responded on 06 June 2023 and accepted the proposal in full.

Case examiners' response and final decision

The case examiners have again considered the public interest in this matter and, as they have not been presented with any new evidence that might change their previous assessment, they are satisfied that it remains to be the case that the public interest in this case can be fulfilled through the accepted disposal process.

The case examiners therefore direct that Social Work England implement a 3 year warning order.